in at least one law review. In reality, however, its contribution to that subject is mere dictum at most. The decision did not turn upon the technical nomination of the transaction; the name of the transaction depended upon the decision, and was irrelevant to the issue. The amount of damages depended only upon the finding as to what had been the defendant's undertaking,—to deliver to the plaintiff merely the specific goods mentioned, which he had done, or to pay him the consideration of $9,600.00 in those goods so far as they should suffice and the rest in money. The court's confusion of expression appears to be due to the difficulty of reaching either of these findings from the facts as they appear, instead of recognizing that there had been a mistake of fact in the agreement, namely, in supposing that the groceries at W. were more than sufficient to cover the amount necessary.

TORTS—PROXIMATE CAUSE.—Where a prairie fire is negligently caused by a railway company, and the wife of a homesteader who is left at home alone with her young daughter uses every reasonable effort to put out such fire, and in doing so overworks and strains herself so that permanent injuries ensue, *held*, that she can recover damages from such company therefor, provided that she did not unreasonably and recklessly expose herself to such injury. *Wilson* v. *Northern Pac. Ry. Co.* (N. Dak. 1915) 153 N. W. 429.

In an earlier case, and one which is generally cited as expressing the true doctrine, the court said: "That one, who, acting with reasonable prudence, voluntarily exposes himself to danger for the purpose of protecting his property may recover for consequent injuries he receives from the person whose wrong caused the injury to himself and damage to the property he sought to protect." *Liming* v. *R. R. Co.*, 81 Ia. 250; *Page* v. *Bucksport*, 64 Me. 51, 18 Am. Rep. 239; *Ingalls* v. *Bills*, 9 Met. (Mass.) 1; *T. P. & W. R. R. Co.* v. *Pindar*, 53 Ill. 447; *Harris* v. *Township of Clinton*, 64 Mich. 447; *Berg* v. *Great Northern Ry. Co.*, 70 Minn. 272. The case of *Seale* v. *Gulf, C. & S. F. Ry. Co.*, 65 Tex. 274, 57 Am. Rep. 602, takes a contrary view, the court holding "that whether the deceased was negligent or not in her attempt to put out the fire, that attempt, and not the original negligence of the defendant in starting the fire, was the proximate cause of her death and that the company should be held to have contemplated that the life of anyone attempting in a careful manner to extinguish the flames would be sacrificed would be unreasonable." The case of *Logan* v. *Wabash Ry. Co.*, 96 Mo. App. 461, decided that while it was the plaintiff's duty to use every reasonable effort to extinguish the fire and prevent the loss, it did not necessarily follow that if, in so doing, he was injured, the defendant became liable. Accord, *Chattanooga Light & Power Co.* v. *Hodges*, 109 Tenn. 331, 60 L. R. A. 459; *Henry* v. *C. C. C. & St. L. Ry. Co.*, 67 Fed. 426; *Cook* v. *Johnston*, 58 Mich. 437, 55 Am. Rep. 703. The cases which sustain the defendant's view in the case of *Seale* v. *Gulf, C. & S. F. Ry. Co.*, supra, are wrong in principle and opposed to the weight of authority. The court is wrong in holding that the proximate cause of the injury was not the original negligence of defendant in starting the fire, but was the attempt of the plaintiff to put it out. It was wholly due to the negligence of defendant that plaintiff's property was exposed to danger and

it then became plaintiff's duty to make an effort to save the property and prevent damage to it, and if in so doing, and while exercising such care for his safety as is reasonable and prudent under the circumstances, he is injured as a result of the negligence against the effect of which he is seeking to protect his property, the wrongdoer whose negligence is the occasion for the injury must respond for the damages. It is not just that the loss should fall on the innocent victim.

WATER AND WATER COURSES—DRIPPING FROM EAVES.—The eaves of defendant's building projected over a part of plaintiff's lot and threw the rain water falling on the roof of the building against the side wall of a structure on plaintiff's lot. In an action for damages and an injunction, *held,* that plaintiff was entitled to relief as the right of eaves-drip is an easement and not a right appurtenant to the ownership of land. *Shea* v. *Gavitt* (Conn. 1915) 94 Atl. 360.

Some courts adopt the view that a property owner is bound at his peril to prevent water accumulated on his premises by artificial means, such as the roofs of buildings, from flowing onto adjacent premises. *Martin* v. *Simpson,* 6 Allen (Mass.) 102; *Shipley* v. *Fifty Associates,* 106 Mass. 194; *Fitzpatrick* v. *Welch,* 174 Mass. 486; *Davis* v. *Smith,* 141 N. C. 108; *Huber* v. *Stark,* 124 Wis. 359; *Bellows* v. *Sackett,* 15 Barb. (N. Y.) 96; *Jutte* v. *Hughes,* 67 N. Y. 267; *Tanner* v. *Volentine,* 75 Ill. 624, *semble.* The doctrine of *Rylands* v. *Fletcher,* L. R. 3 H. L. 330, seems to have influenced this line of authority. *Shipley* v. *Fifty Associates,* supra; *Garland* v. *Towne,* 55 N. H. 55 at 58. Other cases while seeming to lean toward this rule of strict liability would not apply it till the owner had notice of the defective condition, *Copper* v. *Dolvin,* 68 Iowa 757, or fair means of knowledge, *Armstrong* v. *Luco,* 102 Cal. 272. In other jurisdictions an owner is not liable for damage caused by such water escaping if he has used ordinary care to prevent it. *Underwood* v. *Waldron,* 33 Mich. 232; *Barry* v. *Peterson,* 48 Mich. 263; *Philips* v. *Taylor,* 93 Minn. 28; *Miller* v. *Wilson,* 104 Ill. App. 556; *Bell* v. *Realty Co.,* 163 Mo. App. 361; *Garland* v. *Towne,* supra, *Hazeltine* v. *Edgmand,* 35 Kan. 202, *semble; Gould* v. *McKenna,* 86 Pa. St. 297, *semble.* These rules are applied not only to water cast from the roofs of buildings, but whenever the surface of the ground has been rendered impervious to water by any artificial means, as for example by a pavement, *Jutte* v. *Hughes,* supra, or a lumber pile. *Thoele* v. *Planing Mill Co.* (Mo. App.) 148 S. W. 413. It is immaterial whether the water goes in liquid form, or as snow, *Garland* v. *Towne,* supra; *Shipley* v. *Fifty Associates,* supra, or as ice, *Davis* v. *Niagara Power Co.,* 171 N. Y. 336. It is not necessary that the water be thrown from the structure onto plaintiff's land to found a liability; but if it falls on defendant's land a liability arises if it flows onto adjacent land in practically undiminished volume. *Bellows* v. *Sackett,* supra; *Connor* v. *Woodfill,* 126 Ind. 85. The authorities which consider the nature of the right of eaves-drip are quite uniform in considering it an easement and not a right appurtenant, as the defendant contended in the principal case. GODDARD, EASEMENTS (2d Amer.) p. 276; GALE, EASEMENTS (8th Eng.) p. 251; *Huber* v. *Stark,* supra. If this is true, throwing water on